expend his own money on the maintenance of his ward. It may be that rules should be framed under section 21 of the Guardianship of Infants Act, 1961 but my own view (I may very well be wrong) in the situation as it stands is that when the court orders the appointment of a guardian of the person of a minor it should put the guardian in a position to support the minor. The applicant in this case cannot ask for her own maintenance in these proceedings. She can at the most, if the view which I have taken is correct, seek an order against the respondent for the maintenance of the three minor children.

The applicant will have the guardianship of the three minor children Sia Yet Wah, Sia Guek Yin and Sia Yek Yen who are ordered to be delivered into the custody and care of the applicant and the respondent will as from the 1st day of March, 1971 pay to the applicant a sum of $60 per month for the maintenance of the three minor children until further orders The respondent has his own goldsmith's business in a well known business locality of Malacca and I for one do not believe that his monthly income is only $150. The applicant is able to maintain herself. There will, of course, be liberty to the parties to apply. The respondent will have access to his children. He should make an application for the purpose to work out the details and I will hear that application in chambers.

The applicant will have the costs of this application.

Application granted.

Solicitors: *Koh Kim Leng & Co.; Ting Poi Teck & Co.*

SHANMUGAM v. PUBLIC PROSECUTOR

[O.Cr.J. (Mohamed Azmi J.) March 2, 1971]

[Kuala Lumpur — Criminal Application No. 4 of 1971]

Criminal Law and Procedure — Bail — Application for — Non-bailable offence — Rape — Offence punishable with death or imprisonment for life — Offer of marriage to victim — Not exceptional and special reason — Criminal Procedure Code (Cap. 6), ss. 388 & 389.

Penal Code, s. 376 — Rape — Application for bail — Exceptional and very special reasons.

This was an application by the accused for bail. He had been charged with the offence of rape, which was an offence punishable with imprisonment for life. Under section 388(i) of the Criminal Procedure Code (as amended by the Criminal Procedure Code (Amendment) Act, 1967), a president or magistrate has no power to grant bail in a case involving a non-bailable offence if there appears to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or with imprisonment for life. The president of the sessions court before whom the accused had been charged had refused bail. The principal ground of the application for bail was that the accused and the girl with whom the offence was alleged to have been committed wanted to get married.

Held: in this case the object of the application for bail was in effect to get the rape charge against the accused withdrawn, that is to frustrate or embarrass the criminal proceedings which were being taken against the accused. There were no exceptional or special reasons and therefore the application must be dismissed.

Cases referred to:-

(1) *Re K.S. Menon* [1946] M.L.J. 49.

(2) *R. v. Ooi Ah Kow* [1952] M.L.J. 95.

CRIMINAL APPLICATION.

M. Mahalingam for the applicant.

Mohamed Adnan bin Dato' Shuaib (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J.: This is an application under section 389 of the Criminal Procedure Code (F.M.S. Cap. 6) for an order for bail pending trial of the applicant.

The applicant was arrested on January 15, 1971 and charged in Kuala Selangor sessions court under section 376 of the Penal Code for rape against a girl aged 12 years old. He was charged in court on January 22, 1971 and the preliminary enquiry has been fixed on March 15, 1971. On the day he was charged, bail was applied for before the learned president, sessions court, but the application was refused. As the offence under section 376 of the Penal Code is punishable with imprisonment for life, I think the learned president was correct in refusing bail. In the case of *Re K. S. Menon*(1) where the provisions of section 388(i) of the Criminal Procedure Code were considered, it was held that the expression "punishable with death or penal servitude for life" should be read disjunctively as though it read "with death or with penal servitude for life". This decision was subsequently followed by Spencer Wilkinson J. in *R. v. Ooi Ah Kow.*(2) With the decision in these two cases, I fully agree, and with the coming into force of the Criminal Procedure Code (Amendment) Act, 1967 with effect from June 1, 1967, the position is that a president or a magistrate has no power to grant bail under section 388(i) in a case involving a non-bailable offence if there appears to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or with imprisonment for life.

Following the two cases which I have cited above, I am also of the opinion that for the present application to succeed, the applicant must show exceptional and very special reasons before the court should agree to exercise its discretion under section 389 of the Criminal Procedure Code. Relying on the affidavits filed by the elder brother of the applicant and the father of the girl, learned counsel for the applicant submitted the following grounds as exceptional and special reasons for the present application: —

(1) The applicant and the complainant are in love and they want to get married.

(2) The complainant being a minor cannot get married without the consent of her parent or guardian. In the present case, the complainant's father has given his consent and blessings to the proposed marriage.

(3) Unless the complainant gets married with the applicant, it will be difficult for her to find another

prospective husband. Her marriage to the applicant is, therefore, in her own interest.

(4) If they get married now, the complainant would avoid undue publicity; and there is a possibility, depending on the direction of the Public Prosecutor, that the rape charge against the applicant would be withdrawn.

What constitute exceptional and special reasons must necessarily depend on the facts of each case. One of the main considerations in granting bail is whether the accused, if released on bail, is likely to tamper with the prosecution evidence or to get up false evidence in support of his defence. In the present case, I find that the very object of the present application for bail is not so much for the purpose of the proposed marriage but rather to get the rape charge against the applicant withdrawn. The proposed marriage, therefore, is a means to an end. To put it bluntly, the object is to frustrate or embarrass the criminal proceedings which are being taken against the applicant. In cases of this type, where the applicant is charged for rape against a girl of tender years, the fact that the applicant wanted to marry the girl with a view to get the charge withdrawn is, to my mind, insufficient to constitute exceptional and very special reasons for the purpose of granting bail under section 389 of the Criminal Procedure Code.

Under the circumstances of the present case, I am of the opinion that the grounds put forward by learned counsel for the applicant fall short of being exceptional and very special reasons; and I would, therefore, dismiss the application.

Application dismissed.

Solicitors: *Mahalingam & Co.*

SUPERINTENDENT OF LANDS AND SURVEYS, THIRD DIVISION v. WAH TAT BANK LTD. & ANOR.

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) & Yong J.) March 3, 1971]

[Kuching — Federal Court Civil Appeal No. 90 of 1970]

Land Laws — Land acquisition — Procedure of court — Principles to be applied — Sarawak Land Code (Cap. 81).

The Government of Sarawak had resumed certain lands for the development of Sibu port and the Superintendent of Lands and Surveys had made an award of $111,000 for one lot and $267,000 for the other lot. The respondents asked for a reference to the court and at the hearing the learned judge increased the awards to $114,000 and $274,000 respectively.

Held, allowing the appeal: as the learned judge had held that the respondents had failed to prove that the superintendent's award was inadequate, the award of the superintendent should have been confirmed.

Cases referred to:-

(1) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243 at p. 245.

(2) *Assistant Development Officer, Trombay* v. *Tayaballi Allibhoy Bohori* 1933 A.I.R. Bom. 361.

FEDERAL COURT.

Jemuri bin Serjan for the appellant.

S. Sahathevan for the respondents.

Cur. Adv. Vult.

Ismail Khan C.J. (Borneo): The Government of Sarawak resumed under the Sarawak Land Code (Cap. 81) for the development of Sibu Port, Sarawak, two parcels of land *viz:-*

(1) That parcel of land held under Occupation Ticket No. 27830 situate in Channel Road in area 1529 square feet (hereinafter called Lot 27830), the property of Wah Tat Bank (hereinafter called the first respondent).

(2) That parcel of land held under Occupation Ticket No. 21842 situate in Channel Road in area 3866 square feet, the property of one Teo Sien Ching as trustee (hereinafter called the second respondent).

The Superintendent of Lands and Surveys (hereinafter called the superintendent) made an award of $111,000 for Lot 27830 and $267,100 for Lot 21842. The first and second respondents each asked for a reference to the High Court at Sibu. The two references Nos. 9 and 10 of 1969 were consolidated, and at the hearing thereof the learned judge increased the award for Lot 27830 to $114,000 and the award for Lot 21842 to $274,000. This appeal is against the decision of the learned judge in making the increased award for each of the two lots.

Lot 27830 is flat land and rectangular in shape. It lies 35 feet away from the bank of the Rejang River. It is held under an open land title. There is a small building on the land used as a grocery shop. Lot 21842 is also flat land roughly triangular in shape 35 feet away from the Rejang River. The condition on the title of this lot restricts its user only as a godown site. There is a small store on this land.

At the enquiry held by the superintendent, the first respondent claimed a sum of $764,500 for his Lot and the second respondent a sum of $1,933,000 for his. Both the respondents relied on the sales of two lots, *viz.* Lot 1465 and Lot 1466 Sibu Town in support of their respective claims. The evidence relating to such sales was rejected. The superintendent awarded a sum of $111,000 for Lot 27830 and a sum of $267,000 for Lot 21842.

The question for decision is this court is the market value of each of the two lots as on the 9th day of August 1968, being the material date, and if the learned judge's award represented such market value.

At the hearing of the consolidated reference, counsel for the first respondent reduced his claim from $764,500 to $183,000, *i.e.* $120 per square foot. The second respondent also reduced his claim from $1,933,000 to $386,000, *i.e.* $100 per square foot.

Mr. Chew Kim Poom, assistant manager of the respondent bank relied upon the sales of Lots 1465